



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



Richard Marriot
18 Thomas Point Road
Tuftonboro, NH 03816

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
NO. AF 01-010**

March 19, 2001

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Waste Management Division ("the Division") to Richard Marriott, pursuant to RSA 146-C:10-a and Env-C 601.05. The Division is proposing that fines totaling \$4,000 be imposed against Richard Marriott for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Richard Marriott is an individual having a mailing address of 18 Thomas Point Road, Tuftonboro, NH 03816.

III. Summary of Facts and Law Supporting Claims

1. RSA 146-C authorizes the Department of Environmental Services ("DES") to regulate underground storage tank ("UST") facilities. Pursuant to RSA 146-C:9, the Commissioner of DES has adopted rules to implement this regulatory program (Env-Wm 1401, effective April 22, 1997, which superceded Ws 411 effective September 17, 1985 through November 1, 1990 and Env-Ws 411 effective November 2, 1990 through April 21, 1997).
2. RSA 146-C:10-a authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C, including any rule adopted pursuant thereto. Pursuant to RSA 146-C:10-a, I, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
3. Richard Marriott was the owner of two 500 gallon gasoline UST systems that were located at the Richard Marriott residence, 18 Thomas Point Road, Tuftonboro, NH, further identified as UST #0-115375 ("the Facility"). The UST systems were removed on November 28, 2000.
4. The Facility is subject to the requirements of RSA 146-C and the rules adopted pursuant to that chapter.

5. Env-Wm 1401.32(b) requires all existing steel USTs to be protected from corrosion no later than December 22, 1998, by meeting the requirements of Env- Wm 1401.32(i).
6. If a UST does not have corrosion protection, Env-Wm 1401.32(j) requires the UST to be permanently closed.
7. Env-Wm 1401.33(b) requires all existing metal piping that routinely contains regulated substances and is in contact with the soil or other backfill material to have been protected from corrosion no later than December 22, 1998.
8. Division records show that the two 500-gallon steel USTs and associated metal piping systems at the Facility did not have corrosion protection and that they were not closed by December 22, 1998.

IV. Violations Alleged

1. Richard Marriott has violated Env-Wm 1401.32(b) by failing to protect the two existing steel USTs at the Facility from corrosion or permanently closing the USTs no later than
2. Richard Marriott has violated Env-Wm 1401.33(b) by failing to protect the two existing steel piping systems at the Facility from corrosion no later than December 22, 1998.

V. Proposed Administrative Fines

1. For the violations identified in IV .1. above, Env-C 607.03(e) specifies a fine of \$1,000 per violation. For the two violations noted above, the Division is seeking a total fine of \$2,000.
2. For the violations identified in IV .2. above, Env-C 607.03(f) specifies a fine of \$1,000 per violation. For the two violations noted above, the Division is seeking a total fine of \$2,000.

The total fine being sought is \$4,000.

VI. Hearing, Required Response

You have the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, May 14, 2001 at 1:00 p.m. in Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH. **Pursuant to Env-C 601.06, you are required to respond to this notice.** Please respond **no later than April 25, 2001**, using the enclosed colored form as follows:

1. If you plan to attend the hearing, please sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, as noted on the form.
2. If you choose to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.

3. If you wish to discuss the possibility of settling the case, please sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate your interest in settling.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If you wish to have a hearing but are unable to attend as scheduled, you must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled. If you do not notify Mr. Ballentine in advance and do not attend the hearing, the hearing will be conducted in your absence in accordance with Env-C 204.09.

VII. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence**, applies in this case:

The violation was a one-time or non-continuing violation, **and** you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** you did not benefit financially, whether directly or indirectly, from the violation.

2. At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
3. You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

The hearing that has been scheduled is a formal hearing. The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed.

The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced. If you have any evidence, such as photographs, business records or other documents, that you believe show that you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

If you wish to have an informal meeting to discuss the issues, you must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If you have any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.


COPY
Philip J. O'Brien, Director
Waste Management Division

Enclosure (NHDES Fact Sheet #CO-2 2000)

cc: Gretchen Rule, DES Enforcement Coordinator
Susan Alexant, DES Hearings and Rules Attorney